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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,007	09/23/2003	Masaaki Ogura	243084US2	1929
22850	7590	05/30/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER WU, JUNCHUN	
			ART UNIT 2191	PAPER NUMBER
			NOTIFICATION DATE 05/30/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/668,007

**Applicant(s)**

OGURA, MASAOKI

**Examiner**

JUNCHUN WU

**Art Unit**

2191

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-19 is/are allowed.
- 6) ☒ Claim(s) 20-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This office action is in response to the RCE filed on Feb. 29, 2008
2. Claims 20-77 are pending in this application.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al (USPN 5,835,911) in view of Sakanishi (USPN 6,678,888 B1) and further view Andrews et al (USPUB 20030193906 A1)

Regarding claim 20

Sakanishi teaches

- apparatus comprises: a second storage part; a software writing part that writes the first software to the second storage part when acquiring the first software from the remote managing apparatus software transmitting part; and an intermediary apparatus software transmitting part that transmits the first software stored in the second storage part to at least one of the electronic apparatuses when the at least one of the electronic apparatuses requires the second software stored therein to be updated. However, Sakanishi teaches (column 6, lines 53-67, In addition, one of the control systems 06 including a control

system serving a distribution intermediate and a controlled system 08 are provided with a distributed-software-recipient-information memory means 04 for storing information on already installed software, an affected-software- management-information memory means 05 for storing information on software affected by updating of installed software for each piece of already installed software and distributed- software-determining means 09 and 14 each used for determining software to be distributed in accordance with a distribution command from these pieces of information. It should be noted that the distributed software-recipient-information memory means 04 provided in a controlled system 08 is referred to as an already-installed-software-information memory means 04). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to incorporate intermediate apparatus or source in software update. The modification would have been obvious because one of ordinary skill in the art would have been motivated to combine teaching into software distribution and updating by having intermediate apparatus in between to control the number of activities in software updating remotely so the processing goes efficiently and results re achieved without errors.

- Both Nakagawa and Sakanishi do not disclose a transmission rate measuring part that measures a first transmission rate between the intermediary apparatus and the remote managing apparatus and a second transmission rate between the intermediary apparatus and the at least one of the electronic apparatus; and a transmission rate reporting part that reports the first and second transmission rates to the remote managing apparatus so that the remote managing apparatus generates an

update date and time for updating the second software based on the reported first and second transmission rates and transmits the generated update date and time to the intermediary apparatus for the second software to be updated.

But Andrews discloses ([0027] “it is convenient to adopt a convention in which transmission rate are expressed in bits per timeslot...” & [0037] “the scheduler obtains a DRC from each remote terminal. The DRC indicates to the base station which of available discrete data transmission rates is requested by the remote terminal for the current timeslot”).

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to incorporate transmission rate between the intermediary apparatus and the remote apparatus. The modification would have been obvious because one of ordinary skill in the art would have been motivated to combine teachings of Nakagawa and Sakanishi into software distribution and further include transmission rate between intermediate apparatus and the remote apparatus teaching by Andrews so transmission rate requested by a given remote terminal in a given timeslot is DRC.

Regarding claim and 21

Sakanishi teaches

- when two or more of the electronic apparatuses require the second software thereof to be updated, the software transmitting part of the intermediary apparatus transmits the first software stored in the second storage part to each of the two or more of the electronic apparatuses (see figures 2, 13-17, column 10, lines 63-67 and column 11, lines 1-9, The

uppermost-level control system creates a software-identifying ID, a version and information on a controlled system in a simple combination and generates a command making a request for software distribution. Receiving the command making a request for software distribution from the uppermost-level control system, the intermediate control system checks whether or not the desired software file exists in a management data base. If the desired software file does not exist in a management data base, the file is downloaded from the upper-level system. Then, management information is retrieved from a management data base to determine software to be distributed. A command making a command making a request for software distribution is created and transmitted to a lower-level system along with the software to be distributed).

#### Regarding Claim 22

##### Sakanishi teaches

- the first software stored in the first storage part of the remote managing apparatus comprises software programs of different types; and the second software differs in type between two or more of the electronic apparatuses; and (column 6, lines 58-67 and column 7, lines 1-25, A further feature of the present invention resides in a software distribution and maintenance system using a network in which a number of users U 1, U2,... using a number of types of object software to be distributed, managed, and maintained, and a number of software vendors V 1, V2, ... supplying the object software manage the distribution and maintenance of the object software over a computer network, comprising: one or more first process means CPs installed in each of user computers, that

manage object software groups S 1, S2,... to be used by one of more users U1, U2,... individually for every object software and for every user; one or more second process means SPs installed in either of software vendor computers, that gives services to vendor software libraries SL (S1), SL (S2),... for each of the software libraries; a network that connects the first process means CP installed in the user computer to the second process means SP, based on standardized communications protocols; and wherein said first process means CP has a capability that perform distribution and/or maintenance of the object software by sending a message that requests to distribute and/or maintain the object software for one piece of object software over the network, according to instructions given by the users U1, U2,... or a user- defined program, receiving an answer message from the second process means SP, and processing it depending on contents of the answer message and settings made by the users U 1, U2,... ; and said second process means SP has a capability to receive the message from an arbitrary first process means CP, to reference the software libraries SL(S 1), SL(S2),... managed by the vendors V 1, V2,... depending on the contents of a received message and settings made by the vendors V1, V2,... for the object software specified with the message, to generate an answer message to answer the request of" distribution and/or maintenance of the object software, and to send the answer message to said first process means CP of the sender of the corresponding message. Nakagawa et al: does not teach explicitly the intermediary apparatus software transmitting part transmits two or more of the software programs of the first software to the two or more of the electronic apparatuses in accordance with the types of the second software thereof. However, Sakanishi teaches, (column 6, lines 53-

67, In addition, one of the control systems 06 including a control system serving a distribution intermediate and a controlled system 08 are provided with a distributed-software-recipient-information memory means 04 for storing information on already installed software, an affected-software- management-information memory means 05 for storing information on software affected by updating of installed software for each piece of already installed software and distributed software-determining means 09 and 14 each used for determining software to be distributed in accordance with a distribution command from these pieces of information. It should be noted that the distributed-software-recipient-information memory means 04 provided in a controlled system 08 is referred to as an already-installed-software-information memory means 04).

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to incorporate intermediate apparatus or source in software update. The modification would have been obvious because one of ordinary skill in the art would have been motivated to combine teaching into software distribution and updating by having intermediate apparatus in between to control the number of activities in software updating remotely so the processing goes efficiently and results re achieved without errors.
- Regarding claim 23  
Nakagawa et al teaches  
a schedule generating part that generates an update date and time for updating the second software (column 12, lines 20-35, When the first process unit 1b is activated at a



predetermined time, the first process unit 1b sends the current configuration information of the object is software 1a to the second process unit 3a to inquire the latest configuration, receives an answer from the second process unit 3a, updates the object software 1a according to the update instruction information in the answer, and prepares for the compiling and linking of programs if necessary. Thus, the object software 1a can be automatically updated. Therefore, the object software 1a can be automatically updated at night, for example, with the user released of being kept waiting in updating the object software 1a during the operation of the software. Furthermore, by the activation of the first process unit 1b at times predetermined by user's software, the object software 1a can be automatically updated periodically every dawn, every week, or every month without user's explicit operations; and a schedule transmitting part that transmits the generated update date and time to the intermediary apparatus (column 12, lines 20-35, When the first process unit 1b is activated at a predetermined time, the first process unit 1b sends the current configuration information of the object is software 1a to the second process unit 3a to inquire the latest configuration, receives an answer from the second process unit 3a, updates the object software 1a according to the update instruction information in the answer, and prepares for the compiling and linking of programs if necessary. Thus, the object software 1a can be automatically updated. Therefore, the object software 1a can be automatically updated at night, for example, with the user released of being kept waiting in updating the object Software 1a during the operation of the software. Furthermore, by the activation of the first process unit 1b at times predetermined by

user's software, the object software 1 a can be automatically updated periodically every dawn, every week, or every month without user's explicit operations);

the remote managing apparatus software transmitting part of apparatus transmits the first software stored in the first storage part to the intermediary apparatus at a request thereof (column 30, lines 36-41, If the software has not been updated, then the update instruction information informs of no need of update. If the information tells no need of update or deletion of modules only, then no updated software is transmitted. If the software should be updated, then updated software is received, but received is only the modules to be updated into); and a schedule writing part that writes the update date and time to the second storage part when receiving the update date and from the remote managing apparatus (column 30, lines 47-54, In step \$6, necessary processes are performed according to the update information. That is, if update instruction information indicates the update of modules, then specified modules are deleted from the object software and updated modules are added to the original modules. If the update instruction information tells no need of update, then no actions are taken); and a transmission requesting part that requests the remote managing apparatus to transmit the first software to the intermediary apparatus when the update date and time stored in the second storage part is reached (column 30, lines 36-41, If the software has not been updated, then the update instruction information informs of no need of" update. If the information tells no need of update or deletion of modules only, then no updated software is transmitted. If the software should be updated, then updated software is received, but received is only the modules to be updated into).

Regarding claims 36, 41, 46 and 62

Nakagawa et al teaches

- writing an update date and time to an intermediary apparatus storage part of the intermediary apparatus when the update date and time is received from the remote managing apparatus (apparatus (column 30, lines 47-54, In step \$6, necessary processes are performed according to the update information. That is, if update instruction information indicates the update of modules, then specified modules are deleted from the object software and updated modules are added to the original modules. If the update instruction information tells no need of update, then no actions are taken); requesting the remote managing apparatus to transmit software to the intermediary apparatus when the update date and time in the storage part is reached (column 12, lines 20-35, When the first process unit 1 b is activated at a predetermined time, the first process unit 1 b sends the current configuration information of the object software 1 a to the second process unit 3a to inquire the latest configuration, receives an answer from the second process unit 3a, updates the object software 1 a according to the update instruction information in the answer, and prepares for the compiling and linking of programs if necessary. Thus, the object software 1 a can be automatically updated. Therefore, the object software 1 a can be automatically updated at night, for example, with the user released of being kept waiting in updating the object software 1 a during the operation of the software. Furthermore, by the activation of the first process unit 1b at times predetermined by user's software, the object software 1a can be automatically

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updated periodically every dawn, every week, or every month without user's explicit operations); and writing the software to the intermediary apparatus storage part when the software transmitted in response to said step (b) from the remote managing apparatus is acquired, transmitting the software in the intermediary apparatus storage part to at least one of the electronic apparatuses when the at least one of the electronic apparatuses requires software stored therein to be updated, and causing the at least one of the electronic apparatuses to update the software thereof stored therein (column 30, lines 36-41, If the software has not been updated, then the update instruction information informs of no need of update. If the information tells no need of update or deletion of modules only, then no updated software is transmitted. If the software should be updated, then updated software is received, but received is only the modules to be updated into).

Regarding claims 25, 27, 30, 33, 42, 44, 51, 56, 67 and 72

Rejection of claims 20, 36, 41, 46 and 62 is incorporated and further claims 25, 27, 30, 33, 42, 44, 51, 56, 67 and 72 recites limitations as in claim 8, therefore claims 25, 27, 30, 33, 42, 44, 51, 56, 67 and 72 are rejected under same rationale.

Regarding claims 24, 26, 28, 29, 31, 32, 34 and 35

Rejection of claim 20 is incorporated and further claims 24, 26, 28, 29, 31, 32, 34 and 35 recites limitations from claims 22-23 therefore, claims 24, 26, 28, 29, 31, 32, 34 and 35 are rejected under same rationale.

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Regarding claims 37-40

Rejection of claim 36 is incorporated and further claims 37-40 recites limitations from claim 20 therefore, claims 37-40 are rejected under same rationale.

Regarding claims 43 and 45

Rejection of claim 41 is incorporated and further claims 43 and 45 recites limitations as in claims 20 and 36, therefore, claims 43 and 45 are rejected under same rationale.

Regarding claims 47-50, 52-55 and 57-61

Rejection of claim 46 is incorporated and further claims 47-50, 52-55 and 57-61 recites limitations as in claims 20, 36 and 41, therefore, claims 47-50, 52-55 and 57-61 are rejected under same rationale.

Regarding claims 63-66, 68-71 and 73-77

Rejection of claim 62 is incorporated and further claims 63-66, 68-71 and 73-77 recites limitations as in claims 20, 36 and 41, therefore, claims 63-66, 68-71 and 73-77 are rejected under same rationale.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 20, 36, 41, 46, and 62 currently amended claims that cited prior art does not disclose or suggest.

Claim 1 has been allowed but other independent claims do not specifically define remote managing apparatus and electronic apparatus while transmission rate measures and reports first and second transmission rate. So, examiner rejected independent claim 20 with new art –see Andrews. Same rationale is rejected to independent claims 36, 41, 46, and 62.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUNCHUN WU whose telephone number is (571)270-1250. The examiner can normally be reached on 8:00-17:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Wei Zhen/

Supervisory Patent Examiner, Art Unit 2191